HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:27010 OF 2007

Dated:20.12.2007

Between:

M/s. Durga Crane Services,
No.327/2RT, Sanjeeva Reddy Nagar,
Hyderabad rep., by its Partner
R. Srinivasa Rao, Managing Partner.

..Petitioner

And

1. The Commercial Tax Officer,
   Sanathnagar Circle, Hyderabad and others.

..Respondents.

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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the action of the 2nd respondent in rejecting the appeal filed by the petitioner for the assessment year 2001-2002 through the impugned order dated 28.8.2006 served on the petitioner on 26.6.2007 on the ground of non-compliance of condition of pre-deposit of 12.5% of the disputed tax for maintaining the appeal and consequential action of the 1st respondent in issuing the impugned garnishee notice as illegal and arbitrary and to direct the 2nd respondent to entertain the appeal and decide the same on merits since the petitioner has complied with the condition of pre-deposit for maintaining the appeal.

The main grievance of the petitioner is that the appeal filed by it for the assessment year 2001-2002 was rejected by the 2nd respondent on the technical ground i.e., non-payment of requisite 12.5% of the disputed tax. But the said fact came to the light on issuance of the impugned garnishee notice. The petitioner has deposited 12.5% of the disputed tax and requested the 2nd respondent to reconsider the matter. But, the 2nd respondent expressed its inability. Having aggrieved by the same, the present writ petition has been preferred.

Heard the learned Counsel appearing for the petitioner and

the learned Special Standing Counsel for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that in view of the fact that the appeal has been rejected on a technical ground, the same may be restored to file since the petitioner has deposited 12.5% of the disputed tax in compliance of the proviso to section 19 of the A.P.G.S.T. Act. It is further contended that at this juncture, the issuance of garnishee notice is illegal and unjustified and apart from that, if the relief as to the stay of the garnishee proceedings is not entertained and if the appeal is not directed to be restored to file and disposed of on merits, it would amount to cause prejudice to the rights of the petitioner.

In the facts and circumstances of the case and in view of submission made by the learned Counsel that 12.5% of the disputed tax has been paid, without expressing any opinion on the merits of the case, We feel it a fit case wherein appeal can be restored to file and the garnishee notice can be suspended, but subject to certain conditions.

Accordingly, the appeal before the 2nd respondent is directed to be restored to file and the impugned garnishee notice is suspended on condition of the petitioner depositing 50% of the disputed tax, within a period of eight weeks from today. However, the amount paid, if any shall be given credit to the above stipulated sum. On such deposit, the appeal shall be disposed of within three months. It is needless to observe that in case of non-compliance of the above order, the garnishee notice shall become

operative.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice C.V. Nagarjuna Reddy

Date: 20th December, 2007
Note:
C.C. in two days.
(BO)
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:27010 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

20/12/2007